

Agenda Item # 8

December 1, 2000

To: Delta Protection Commission

From: Margit Aramburu, Executive Director

Subject: Commission Consideration and Possible Readoption of the "Land Use and Resource Management Plan for the Primary Zone of the Delta" and Adoption of Proposed Regulations

Staff Recommendation:

The Commission should review the comments submitted to the Commission, consider the proposed minor amendments suggested as a result of those comments, and vote to adopt the proposed resolution readopting the Land Use and Resource Management Plan for the for the Primary Zone of the Delta and adopting the policies of the land use plan as regulations.

The resolution must be adopted by a **roll call vote. Ten affirmative votes** (the majority of the membership of the Commission) **are needed to readopt the Plan and the proposed regulations.**

Proposed Changes:

Based on the comments submitted during the comment period, minor clarifying changes are recommended:

- Utilities and Infrastructure Policy P-2 (page 11), will be changed to clarify that the local governing body will determine the "highest feasible standards" for new or expanded wastewater disposal systems.
- Land Use Policy P-9 (page 20), which states "the Plan shall not be achieved through the exercise of the power of eminent domain unless requested by the landowner" will be **deleted** because it duplicates language in the Delta Protection Act and is not needed.
- Marine Patrol, Boater Education and Safety Programs Policies (pages 50-51) will be changed to clarify that they apply only to those local governments that have marine patrol programs and do not require development and implementation of a marine patrol program.

See attachments for all written comments submitted and listing of all comments and responses.

Preparation and Circulation of Staff Report regarding Proposed Readoption of Land Use Plan and Adoption of Proposed Regulations:

Purpose of the Proposed Action: As directed by the Office of Administrative Law, the Commission has been proceeding with readoption of the Land Use and Resource Management Plan for the Primary Zone of the Delta and adoption of the policies in the Plan as regulations.

Public Notice of the Proposed Regulations: The Commission submitted the required materials to Office of Administrative Law; that Office ensured that the appropriate notice of the proposed regulations was published in the California Regulatory Notice Register on July 28, 2000. The Commission circulated a notice of its intention to adopt regulations to the required parties and published a notice in local newspapers regarding the three public hearings.

Public Hearings: The Commission scheduled and held three public hearings on September 14, 2000 at the Roberts Union Farm Center, Roberts Island; on September 20, 2000 in the Antioch Community Center, Antioch; and on September 28, 2000 at the Jean Harvie Community Center, Walnut Grove. There were no public comments at any of the three public hearings.

Period for Submittal of Written Comments on Readoption of the Plan: A period for written comments on readoption of the Plan was established, ending on December 6, 2000.

- Five written comments were submitted to the Commission as of the date of this staff report. Copies of the five letters are attached to this staff report in Appendix A. In addition, a chart showing the comments within those five letters and responses drafted by staff are attached in Appendix B. Staff is recommending very minor, clarifying amendments to the proposed regulations as a result of the submitted comments. Minor, clarifying amendments do not need to be recirculated for additional comment or review.

Environmental Analysis:

The Commission has adopted regulations regarding compliance with the California Environmental Quality Act as a certified program (Public Resources Code Section 21080.5).

The Commission's adopted regulations state: Staff shall prepare a draft Delta resource management plan which shall contain an analysis of: (1) potentially significant adverse environmental impact which may result from the proposal, and (2) an analysis of feasible alternatives and feasible mitigation measures to minimize any significant adverse environmental impacts from the proposal.

The analysis shall address both short-term and long-term effects on the environment, and shall also address growth-inducing effects and potential cumulative impacts.

Staff shall provide notice of the availability of the draft plan by mailing a written notice to: (1) each Commission member; (2) each agency represented by a Commission member; (3) other agencies with jurisdiction by law over natural resources of the Delta; (4) the Resources Agency; and (5) any interested person, organization, or agency which has requested notice of the availability of the draft plan; and by publishing the written notice at least once in the newspaper of the largest general circulation in the primary zone of the Delta. The public notice shall provide a public comment period of at least 30 days and shall specify the date that the comment period closes.

The Commission may also hold public meetings and hearings to receive comments.

Staff shall consult with all public agencies which have jurisdiction by law over the activities or the natural resources addressed by the draft plan.

Staff shall prepare a written summary and response to all significant environmental points raised. The written summary and response to significant environmental points shall be presented for consideration and approval by the Commission before, or no later than at the same time as, the draft plan is considered for adoption by the Commission.

Prior to adopting the plan, the Commission shall determine whether the plan would result in significant adverse environmental impacts, and if so, whether feasible alternatives or feasible mitigation measures would substantially lessen any significant adverse impacts.

The December 1994 "Revised Draft Land Use and Resource Management Plan for the Primary Zone of the Delta" included Appendix B, "Environmental Analysis Document for Proposed Land Use and Resource Management Plan for the Primary Zone of the Delta". That Appendix included all the required analysis of the proposed land use plan, and its availability was mailed to the required parties and the required notice was published in the Sacramento Bee. On February 24, 1995, the Delta Protection Commission adopted a "Resolution of Determination of No Significant Adverse Environmental Impacts Resulting from Commission Adoption of the Revised Draft Land Use and Resource Management Plan for the Primary Zone of the Delta". The Resolution was adopted unanimously by the Commission. Copies of the Environmental Analysis Document and the Resolution of Determination are available for review in the Commission's office.

In 1996, the Commission adopted Utilities and Infrastructure Policy P-3 as a regulation. The staff report dated February 23, 1996 included the required CEQA analysis of the proposed regulation and its availability was mailed to the required parties and the required notice was published in the Sacramento Bee. On September 26, 1996, the Delta Protection Commission unanimously adopted Resolution 96-4 accepting the CEQA analysis and adopting the proposed regulation. Copies of the staff report including CEQA analysis and Resolution 96-4 are available for review in the Commission's office.

The proposed regulations are the same as the policies analyzed in the 1995 CEQA analysis and the subsequent 1996 CEQA analysis. No comments were received regarding environmental impacts of the proposed regulations or readoption of the land use plan. Thus, since the Commission determined that the previously prepared and circulated CEQA analysis adequately analyzed the environmental impacts associated with adoption of the land use plan and policies, no further CEQA analysis is required and none will be prepared or circulated. Rather, the Commission can rely upon the earlier CEQA analysis for the proposed actions.

DRAFT

RESOLUTION No. 7-00

Readoption of the Land Use and Resource Management Plan

for the Primary Zone of the Delta

WHEREAS, the Public Resources Code Section 29735 creates the Delta Protection Commission consisting of 19 members including one member of the Board of Supervisors of each of the five Counties within the Delta whose supervisorial district is within the Primary Zone, three elected City Council members from regional and area councils of government, one member from the board of directors of five different reclamation districts which are located in the Primary Zone who are residents of the Delta, the Director of Parks and Recreation or the director's designee, the

Director of Fish and Game or the director's designee, the Executive Officer of the State Lands Commission or the executive officer's designee, the Director of Boating and Waterways or the director's designee, and the Director of Water Resources or the director's designee; and

WHEREAS, the Commission held its first meeting on January 29, 1993 and has met regularly since that date and each meeting has been held in a city within the Delta; and

WHEREAS, the Commission staff and consultants prepared nine background reports to serve as a basis for the resource management plan for land uses within the Primary Zone of the Delta; and

WHEREAS, the Commission appointed agricultural, environmental and recreational advisory committees for the purpose of providing the Commission with timely comments, advice and information in the preparation of the regional land use plan, and the advisory committees reviewed the background reports and the draft plan and presented comments, advice, and information which was incorporated into the plan, and

WHEREAS, the Commission held public hearings on the nine background reports as part of the planning process; and

WHEREAS, Public Resources Code Section 29760 states "the Commission shall prepare and adopt, by a majority vote of the membership of the Commission, and thereafter review and maintain, a comprehensive long-term resources management plan for land uses within the Primary Zone of the Delta"; and

WHEREAS, Public Resources Code Section 29760 states "the regional plan shall consist of the map of the Primary Zone and text setting forth a description of the needs and goals for the Delta and a statement of the policies, standards, and elements of the regional plan"; and

WHEREAS, Public Resources Codes Section 29760 states "the regional plan shall meet the following requirements:

- Protect and preserve the cultural values and economic vitality that reflect the history, natural heritage, and human resources of the Delta;
- Conserve and protect the quality of renewable resources;
- Preserve and protect agricultural viability;
- Restore, improve, and manage levee systems by promoting strategies, including, but not limited to, methods and procedures which advance the adoption and implementation of coordinated and uniform standards among governmental agencies for the maintenance, repair and construction of both public and private levees;
- Preserve and protect delta-dependent fisheries and their habitat;
- Preserve and protect riparian and wetlands habitat, and promote and encourage a net increase in both the acreage and values on public lands and through voluntary cooperative arrangements with private land owners;
- Preserve and protect the water quality of the Delta, both for instream purposes and for human use and consumption;
- Preserve and protect open-space and outdoor recreational opportunities;
- Preserve and protect private property interests from trespassing and vandalism;
- Preserve and protect opportunities for controlled public access and use of public lands and waterways consistent with the protection of natural resources and private property interests;
- Preserve, protect and maintain navigation;

- Protect the Delta from any development that results in any significant loss of habitat or agricultural area;
- Promote strategies for the funding, acquisition, and maintenance of voluntary cooperative arrangements, such as conservation easement, between property owners and conservation groups that protect wildlife habitat and agricultural land, while not impairing the integrity of levees;
- Permit water reservoir and habitat development that is compatible with other uses"; and

WHEREAS, the Commission mailed and published in a newspaper of general circulation in the Primary Zone of the Delta a written notice of the availability of the plan for public review; and

WHEREAS, the Commission held three public hearings in September, 2000 on the readoption of the plan; and

WHEREAS, as directed in Section 29761, staff met with and discussed the proposed actions with staff of the Governor's Office of Planning and Research and no formal comments or recommendations were submitted for the Commission's consideration; and

WHEREAS, the Commission fully complies with the requirements of 14 C.C.R. Section 20015-20021 regarding its obligations under the California Environmental Quality Act as a certified regulatory program in 1995 when the plan was originally adopted; and

WHEREAS, no substantive changes are proposed to the plan and the Commission can continue to rely on the certified regulatory program prepared and adopted in 1995 for its consideration of readoption of the plan; and

WHEREAS, the readoption of the plan would be consistent with the findings and declaration of policy contained in the Delta Protection Act because the plan would "protect, maintain, and where possible, enhance and restore the overall quality of the delta environment, including, but not limited to, agriculture, wildlife habitat, and recreational activities"; will "assure orderly, balanced conservation and development of Delta land resources"; and will "improve flood protection by structural and nonstructural means to ensure an increased level of public health and safety";

NOW THEREFORE BE IT RESOLVED THAT, the Delta Protection Commission hereby readopts a comprehensive long-term resource management plan for land uses within the Primary Zone of the Delta entitled "Land Use and Resources Management Plan for the Primary Zone of the Delta" which consists of :

- The map of the Primary and Secondary zones of the Delta adopted by the Legislature and on file in the State Lands Commission's office, entitled "Delta Protection Act of 1992 map of Zones Sacramento-San Joaquin Delta" and dated October 15, 1992, a copy of which is included in the resource management plan for land uses;
- The text contained in the "Land Use and Resource Management Plan for the Primary Zone of the Delta", adopted February 24, 1995; and
- The changes to the text outlined in the staff report dated December 1, 2000 and any additions thereto made by the Commission at the meeting of December 14, 2000 and reflected in the minutes of that meeting.
- Any minor clarifying language changes needed to meet requirements of the Administrative Procedures Act.

Approved by the Commission on December 14, 2000, by a roll call vote of __ayes, __noes, and __ abstentions.

DRAFT

RESOLUTION No. 8-00

Adoption of the Policies in the Land Use and Resource Management Plan for the Primary Zone of the Delta as Regulations

WHEREAS, the Public Resources Code Section 29735 creates the Delta Protection Commission consisting of 19 members including one member of the Board of Supervisors of each of the five Counties within the Delta whose supervisorial district is within the Primary Zone, three elected City Council members from regional and area councils of government, one member from the board of directors of five different reclamation districts which are located in the Primary Zone who are residents of the Delta, the Director of Parks and Recreation or the director's designee, the Director of Fish and Game or the director's designee, the Executive Officer of the State Lands Commission or the executive officer's designee, the Director of Boating and Waterways or the director's designee, and the Director of Water Resources or the director's designee; and

WHEREAS, Public Resources Code Section 29760 states "the Commission shall prepare and adopt, by a majority vote of the membership of the Commission, and thereafter review and maintain, a comprehensive long-term resource management plan for land uses within the Primary Zone of the Delta"; and

WHEREAS, Public Resources Code Section 29760 states "the regional plan shall consist of the map of the Primary Zone and text setting forth a description of the needs and goals for the Delta and a statement of the policies, standards, and elements of the regional plan"; and

WHEREAS, Public Resources Code Section 29760 states "the regional plan shall meet the following requirements:

- Protect and preserve the cultural values and economic vitality that reflect the history, natural heritage, and human resources of the Delta;
- Conserve and protect the quality of renewable resources;
- Preserve and protect agricultural viability;
- Restore, improve, and manage levee systems by promoting strategies, including, but not limited to, methods and procedures which advance the adoption and implementation of coordinated and uniform standards among governmental agencies for the maintenance, repair and construction of both public and private levees;
- Preserve and protect delta-dependent fisheries and their habitat;
- Preserve and protect riparian and wetlands habitat, and promote and encourage a net increase in both the acreage and values on public lands and through voluntary cooperative arrangements with private land owners;
- Preserve and protect the water quality of the Delta, both for instream purposes and for human use and consumption;
- Preserve and protect open-space and outdoor recreational opportunities;
- Preserve and protect private property interests from trespassing and vandalism;
- Preserve and protect opportunities for controlled public access and use of public lands and waterways consistent with the protection of natural resources and private property interests;
- Preserve, protect and maintain navigation;
- Protect the Delta from any development that results in any significant loss of habitat or agricultural area;
- Promote strategies for the funding, acquisition, and maintenance of voluntary cooperative arrangements, such as conservation easements, between property owners and

- conservation groups that protect wildlife habitat and agricultural land, while not impairing the integrity of levees;
- Permit water reservoir and habitat development that is compatible with other uses"; and

WHEREAS, on February 23, 1995, the Delta Protection Commission unanimously adopted the regional plan including policies in eight chapters including Environment, Utilities and Infrastructure, Land Use, Agriculture, Water, Recreation and Access, Levees, and Marine Patrol, Boater Education and Safety Programs; and

WHEREAS, on November 16, 2000, the Delta Protection Commission unanimously readopted the regional plan including the policies in eight chapters; and

WHEREAS, the Commission now proposes to adopt the policies within the regional plan as policies in conformance with the Administrative Procedure Act (APA) and accordingly issued notice on July 28, 2000 of the proposed action pursuant to the requirements of the APA; and

WHEREAS, notice of the Commission's proposed adoption of the regulations was published in the California Regulatory Notice Register on July 28, 2000; and

WHEREAS, notice of the Commission's proposed adoption of the regulations was mailed to the Commission members, all local governments in and around the Primary Zone, all agencies having authority over the resources in the Primary Zone, and to individuals who had advised the Commission of interest in such matters; and

WHEREAS, the notice provided a public comment period from July 28, 2000 and ending on September 29, 2000; and

WHEREAS, as announced in the Notice of Proposed Adoption, the Commission held three public hearings on the proposed regulations in September, 2000 in the north, south, and west Delta, specifically in Walnut Grove, Sacramento County; west of Stockton, San Joaquin County; and Antioch, Contra Costa County; and

WHEREAS, in accordance with Public Resources Code Section 29761, the Commission provided to the Director of the Governor's Office of Planning and Research (OPR) a copy of the Notice of Proposed Adoption and the Staff Report discussing the proposal and alternatives associated with the proposed regulations and the Commission has received no comments or recommendations from OPR regarding the proposed action; and

WHEREAS, the Commission fully complied with the requirements of 14 C.C.R. Section 20015-20021 regarding its obligations under the California Environmental Quality Act as a certified regulatory program in 1995 when the plan was originally adopted, and again in September of 1996 when the Commission adopted Utilities and Infrastructure Policy P-3 as a regulation; and

WHEREAS, no substantive changes are proposed to the plan policies proposed for adoption as regulations and the Commission can continue to rely on the certified regulatory program prepared and adopted in 1995 and in 1996 for its consideration of adoption of the regulations; and

WHEREAS, the readoption of the plan would be consistent with the findings and declaration of policy contained in the Delta Protection Act because the plan would "protect, maintain, and where possible, enhance and restore the overall quality of the delta environment, including, but not limited to, agriculture, wildlife habitat, and recreational activities"; will "assure orderly, balanced conservation and development of Delta land resources"; and will "improve flood protection by structural and nonstructural means to ensure an increased level of public health and safety";

NOW THEREFORE BE IT RESOLVED THAT:

- The Delta Protection Commission hereby adopts the proposed regulations as described in the proposed notice of adoption and amended in the staff report dated December 1, 2000 and any additions thereto made by the Commission at the meeting of December 14, 2000 and reflected in the minutes of that meeting; and
- The Delta Protection Commission hereby directs staff to prepare and submit the rulemaking file in this matter to the Office of Administrative Law; and take all other actions needed to implement the Commission's action adopting the proposed regulations, including making minor clarifying language changes needed to meet the requirements of the Administrative Procedures Act.

Approved by the Commission on December 14, 2000, by a roll call vote of ___ayes, ___noes, and ___ abstentions.